

1971

Present : Sirimane, J.

URBAN COUNCIL, PANADURA, Appellant,
and M. E. COORAY, Respondent

S. C. 174/70—Labour Tribunal, 11/22116

Labour Tribunal—Inquiry before it—Duty of the tribunal to act judicially.

Though an employee's application for relief before a Labour Tribunal should be heard with sympathy and understanding, yet the tribunal must act judicially. It should not, in an effort to help the employee, shut its eyes to positive evidence which plainly points to where the truth lies.

APPPEAL from an order of a Labour Tribunal.

K. Shinya, with Nihal Singaravelu, for the employer-appellant.

K. Shanmugalingam, with Prins Gunasekera, for the applicant-respondent.

Cur. adv. vult.

July 3, 1971. SIRIMANE, J.—

The respondent to this application was employed by the appellant—the Urban Council of Panadura—as a Sub-Overseer in the Electrical Department.

One of his chief duties was to go to the houses of consumers of electricity and record the meter-readings in a book kept for this purpose.

As a result of complaints received by the Council, the applicant was served with a charge sheet containing five charges. Three of them related to false entries in the meter-book, and the others to absenteeism and failure to perform his duties with due care and diligence.

A full inquiry was held into these charges by a Sub-Committee appointed by the Council, and the respondent was found guilty of all the charges.

The evidence shows that one member of that Sub-Committee who was the Chairman of the Council at the time, pleaded strongly on behalf of the respondent to prevent his immediate dismissal, although the charges were serious. The Council after considering the report of the Sub-Committee unanimously decided that the respondent's "increment should be stopped for one year ; that the Electrical Superintendent should submit a report to this Council regarding his service for three months from today, and that he should be given a final notice that if his work is found to be unsatisfactory according to the report he would be discontinued".

It is common ground that the report of the Electrical Superintendent was adverse to the respondent, and after consideration of this report at a meeting of the Council, it was decided to discontinue his services.

The respondent then made an application to the Labour Tribunal which ordered his re-instatement, and awarded him compensation in a sum of Rs. 800.

The report was not available at the inquiry before the Labour Tribunal as it had been stolen from the office of the Council ; but the Electrical Superintendent himself gave evidence, in the course of which he said that during the "testing period" of three months, the respondent's work was unsatisfactory in that he did not submit the meter-readings in time to enable the Council to send bills to the consumers, because "he was going out always and he was doing some other things". He also said that his attendance was very poor. The respondent had taken leave so often that during the testing period he had absented himself practically half of each month. No allegation was made that this witness was partial or ill-disposed towards the respondent. The Vice-Chairman and the Secretary of the Council also gave evidence for the appellant before the Labour Tribunal in regard to the charges, the inquiries, and the resolutions, that led to the dismissal of the respondent.

The respondent gave no evidence.

He called the Chairman of the Council in 1964 whose evidence was of little relevance to the matters in issue.

The President in the course of his order said :

(a) "No evidence or material have been placed either before me or the Council which took a decision to prove the said report."

The President misdirected himself here because the author of the stolen report himself gave evidence.

(b) "If the applicant had committed any offence during the 3-month testing period such offence, if any, should have been pin-pointed. As this tribunal has not been shown of any concrete instance of any offence committed this tribunal cannot hold that the termination of the services is justifiable."

The President has misdirected himself again ; for he appears to have thought that the respondent had to commit some " offence " within this period before he could be discontinued.

(c) " This report does not say in what manner his work had not improved or on account of what *proved offence* he should be compulsorily retired. In short, the report does not specify any defects or faults on the part of applicant. In the circumstances, while rejecting the arguments of the counsel for the respondent this tribunal strongly holds that compulsorily retiring the applicant on a fictitious report of this nature is both unjust and wrongful."

He is in error again when he looks for a *proved offence*, and forgets or ignores the Electrical Superintendent's evidence relating to the respondent's defects and faults.

As I have had occasion to point out earlier in similar matters, though an employee's case should be considered with sympathy and understanding, yet the tribunal must act judicially. It should not, in an effort to help the employee, shut its eyes to positive evidence which plainly points to where the truth lies. In this case the order of the President is not only unsupported by the evidence but is in direct conflict with it.

The order is set aside and the appeal is allowed with costs.

Appeal allowed.
